

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 26, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2012AP968-CR

Cir. Ct. No. 2011CF209

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ROBERT M. MARTENS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Eau Claire County: JON M. THEISEN, Judge. *Affirmed.*

Before Hoover, P.J., Mangerson, J., and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. Robert Martens appeals a judgment convicting him of fifth-offense operating a vehicle while intoxicated. He entered a guilty plea after the court denied his motion to suppress evidence obtained as a result of an

allegedly unlawful traffic stop. Because we conclude the officer had probable cause to stop Martens' vehicle, we affirm the judgment.

¶2 The traffic offense occurred at the intersection of First Avenue and Lake Street in the city of Eau Claire. At that intersection, there are two north-bound lanes on First Avenue. The left lane was for vehicles turning left or going straight, and the right lane was for vehicles turning right. Lake Street has two east-bound lanes at that intersection. Officer Greg Erickson observed Martens make a right-hand turn from the right lane of First Avenue directly on to the left east-bound lane of Lake Street. Erickson stopped Martens' vehicle for violating WIS. STAT. § 346.31(2) (2011-12)¹ which provides:

RIGHT TURNS. Both the approach for a right turn and the right turn shall be made as closely as practicable to the right-hand edge or curb of the roadway. If, because of the size of the vehicle or the nature of the intersecting roadway, the turn cannot be made from the traffic lane next to the right-hand edge of the roadway, the turn shall be made with due regard for all other traffic.

¶3 Martens contends the State failed to present any evidence regarding the size of his vehicle or the nature of the intersecting roadway, and therefore failed to show a violation under the second sentence of § 346.31(2).²

¹ All references to the Wisconsin Statutes are to the 2011-12 version.

² The parties raise additional arguments regarding the correct burden for establishing a violation of the statute and whether the court could infer the absence of special circumstances from the fact Erickson stopped the vehicle. We need not resolve these issues because the uncontradicted evidence presented at the suppression hearing establishes probable cause that Martens violated § 346.31(2).

¶4 Erickson’s testimony established that Martens violated the first sentence of § 346.31(2) by turning on to the left east-bound lane of Lake Street. The statute required him to turn on to the right east-bound lane. Erickson’s testimony also sufficiently described the intersection and the absence of other traffic. While Erickson did not describe Martens’ vehicle other than referring to it as a “car” at the suppression hearing,³ Martens’ right-hand turn was not authorized by the second sentence of § 346.31(2) regardless of the type of vehicle he drove. The second sentence of the statute applies only when the turn is not started “*from the traffic lane next to the right-hand edge of the roadway.*” (Emphasis added.) The statute does not authorize a vehicle turning from the right lane to turn on to any lane other than the right lane. Because there was probable cause to believe Martens made an unlawful right turn regardless of the type of vehicle he was driving, the State presented sufficient evidence to justify the traffic stop.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

³ Other parts of the record indicate Martens’ vehicle was a 1996 Acura.

